HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case

W.P. No. 3563/2001 (S/S)
(Old No. 31083/1998)

Bal Govind Raturi

vs.

State & others.

Approved for reporting

_____

~~Not approved for reporting~~

Date of decision 16.6.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 3563 (S/S) of 2001
(Old No. 31083/1998)

Shri. Bal Govind Raturi. .... Petitioner

Vs

State of U.P. and others .... Respondents

Counsel for the petitioner Sh. Rakesh Thapliyal
Standing Counsel for the respondent.

Dated:-

Hon'ble Rajesh Tandon J.

Heard Sh. Rakesh Thapliyal Learned counsel for the petitioner and Standing counsel for the respondent.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus directing the respondents to appoint the petitioner on a suitable post on compassionate ground under Dying in Harness Rules.

Briefly stated that facts giving rise to the present writ petition are that Sh. Bal Govind Raturi son of late Shri Rikeshwar Prasad Raturi whose dependent is the petitioner was appointed as Beldar in Public Works Department on 1-6-1985, whose the petitioner is the adopted son. The petitioner has submitted that after the death of his son he represented to the Executive Engineer, Provincial Division Public Works Department, Tehri Distt. Tehri Garhwal for appointment of the

petitioner on the post of driver under the Dying in Harness Rules. The petitioner holds the license of heavy/light vehicle and after considering the petitioners' this qualification the respondent no. 5 recommend the petitioner for the appointment on the post of Driver. Thereafter, the respondent No. 4 sent a letter on 21-1-1997 for appointment of the petitioner on the post of Driver under the Dying in Harness Rules, which was sent to the respondent no. 3. The respondent No. 4, again sent a letter on 3-3-1997 to the respondent no.3, but the respondent no.3 has failed to take any action with regard to this.

On 19-5-1997, respondent no.2, issued an order which was sent to the respondent no. 3 in which direction was given to take action with regard to the appointment of the petitioner under Dying in Harness Rules vide a Government Order dt.16-3-1996. It is specifically mentioned in the Government order dt. 30-10-1996 that the benefit for the Government order dt.16-3-1996 should be given from the date of enforcement of the Government order dt. 16-3-1996 or to those who expired during the service period and completed 10 years total length of service.

The Petitioner has referred the G.O. dated 30-10-1996 , the same reads as under:-

"उपर्युक्त विषयक मुख्य अभियन्ता (कुमायूँ) लोग निर्माण विभाग अल्मोडा के पत्र संख्या 3255/3 व्यय–4 कुमायूँ/96 दिनांक 25.10.96 जिसमें लोक निर्माण विभाग में कार्यरत कार्यप्रभारित कर्मचारियों की सेवा काल में मृत्यु हो जाने पर उनके आश्रितो के कार्यप्रभारित अधिष्ठान में सेवायोजित किये जाने के संबंध में

निर्गत शासनादश संख्या 1108/23.4.96 –26 एनजी/93 दिनांक 16.3.96 का लाभ शासनादेश के निर्गत तिथि से लागू माना जायेगा अथवा उसके पूर्व के सभी कर्मियो को जिनकी मृत्यु सेवा काल में हुई है और 10 वर्ष की सेवा पूर्ण कर चुके है को भी अनुमान्य होगा, के संबंध में जिज्ञासा व्यक्त की गई है। इस संबंध में मुझे यह कहने का निर्देश हुआ है कि उक्त शासनादेश के प्राविधान शासनादेश के निर्गत होने की तिथि अर्थात 16.3.96 से प्रभावी होगें।

कृप्या उक्त निर्णय से भी संबंधित मुख्य अभियन्ताओं को अवगत कराने का कष्ट करें।"

The petitioner has placed reliance on the Apex Court's judgment in the case of Smt. Sushma Gosai and others Vs. Union of India and others, 1989 (4) SCC, 468. The Apex Court has held as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent no. 2 to appoint Sushma Gosain appellant in the post to which she has already qualified. We further direct that she all

be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

In Santosh Kumar Mishra Vs. State of U.P. [(2002) 1 UPLBEC 337. It has been held as under:-

Paragraph – 7 *" Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (Supra), for stressing his submission that the petitioner's father would be deemed to have been a regular Government servant in view of the fact that his appointment has been converted into work charge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of Smt. Push Lata Dixit Vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591, the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Push Lata was working as a Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness Rule was rejected by the Court and the directions were issued to accommodate the petitioner (Smt. Pushp Lata) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi Vs. State of U.P. and others, reported in 1998 (79) FLR 608, was also allowed in which the High Court found that the petitioner's husband in that case has satisfactorily worked for about*

10 years until his death and though he may be a daily wager, the petitioner can be accommodated on compassionate grounds under Dying in Harness Rules. In the case of Smt. Saroj Devi Vs. State of U. P and others, reported in 1999 (3) ESC 2187 (All): 1 UPLBEC (Alld.) (Sum) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy."

Paragraph – 12 *" The Apex Court was considering the scheme and the status of a work-charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge employee and he continues to be a work charge employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law of any Government order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a work charge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State Counsel despite being specifically asked for."*

Paragraph- 16 “ *It may also be taken note of that if daily wager or a work charge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy.”*

Paragraph- 18 *“ It is also not disputed that appointments of such nature have already been given by the department earlier and the respondents State has not been able to indicate as to why the same benefit has not been given to the petitioner.”*

In Chairman, Bihar Rajya Vidyut Board Vs. Chhathu Ram and others [(1995) 5 Supreme Court Cases 673. It has been held as under: -

“The appellants have also conducted that looking to the fact that the respondent was adopted only on 28-2-1989, and the alleged adoptive mother died on 6-9-1989, it could not be said that the respondent was wholly dependent on his mother at the time of her death. Looking to all the facts and circumstances, the Single Judge of the High Court has rightly held that the respondent was not eligible for appointment on compassionate grounds. The High Court ought not to have set aside the order of the Single Judge. We, we therefore, allow the appeal, set aside the judgment of the

High Court and restore the judgment of the Single Judge."

In Singhasan Gupta Vs. State of U.P. and another [(1996) 1 UPLBEC 4]. It has been held as under:-

Mr. R.C. Singh learned counsel for petitioner relies on the judgment of Sunil Saxena Vs. State of U.P, reported in 1994 FLR 283 wherein it has been held: -

" The petitioner is qualified. He has completed his graduation and completed stenography course also. These facts are not denied in the counter affidavit. Therefore, he is eligible for being appointed against Class III post under the Dying in Harness Rules of 1974 because his father has died in harness. If there is no post available in the officer where the petitioner's father was working, he can be appointed any where in the available vacancy on priority basis. If no post is available the respondents are bound to create a supernumerary post for him. I am fortified in this view by an authority of the Supreme Court Sushma Gosain Vs. Union of India."

So far as the work charge employees are concerned it has been held in the case of Santosh Kumar Mishra Vs. State of U.P. and others (2002) 1 UPLBEC 337 that the deceased employee continuously in employment since 10 years is entitled to all benefits available to regular employees. The dependant of deceased employee is entitled to be considered under Dying in Harness Rules.

In view of the above, the respondents are directed to consider the dependants of the deceased work-charge employee for appointment on compassionate ground.

Consequently, the writ petition is allowed. The respondent are directed to consider the appointment of the petitioner on compassionate ground under Dying in Harness Rules, within one month after filing of the certified copy of this order. There will be not order as to costs.

(RAJESH TANDONJ.)

Dated:- 16.6.2004.

M.K.